

1 WO

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Scott Lee DeShaw,
10 Petitioner,

11 v.

12 Charles L Ryan, et al.,
13 Respondents.
14

No. CV-15-00892-PHX-JAT

ORDER

15 Pending before the Court is the Report and Recommendation (“R&R”) from the
16 Magistrate Judge recommending that this case be dismissed for lack of jurisdiction.
17 (Doc. 13). The R&R makes this recommendation because the Petition in this case is a
18 second or successive petition filed without permission from the Court of Appeals to file
19 another case. (Doc. 13 at 3).

20 Prior to filing the Petition in this case, Petitioner filed a request for leave to file a
21 second or successive petition with the Ninth Circuit Court of Appeals. (Doc. 13 at 3).
22 The Ninth Circuit Court of Appeals appointed Petitioner counsel for that case. His
23 counsel in that case has now filed a motion to be appointed as his counsel in this case and
24 in any ancillary state court proceedings. (Doc. 14).

25 In the motion for appointment, counsel correctly recounts that one factor the court
26 should consider in deciding whether to appoint counsel is Petitioner’s likelihood of
27 success on the merits. (Doc. 14 at 2). Counsel then argues that Petitioner’s *Miller* claim
28 is likely to succeed on the merits. (Doc. 14 at 2-3). However, counsel makes no

1 argument that this Court will ever reach the *Miller* claim in this case. In other words,
2 counsel makes no argument that would overcome the R&R's conclusion that this Court is
3 without jurisdiction to hear this case. Therefore, without expressing any opinion on the
4 substance of Petitioner's *Miller* claim; the Court sees no likelihood of success in this
5 case.

6 Based on the foregoing,

7 **IT IS ORDERED** that the motion for appointment of counsel (Doc. 14) is denied
8 in full.

9 **IT IS FURTHER ORDERED** that the motion for status conference (Doc. 16) is
10 denied.

11 **IT IS FINALLY ORDERED** that the motion for extension of time (Doc. 15) is
12 granted such that Petitioner has until January 6, 2017, to file his objections to the R&R
13 (Doc. 13).

14 Dated this 21st day of December, 2016.

15
16
17
18
19
20
21
22
23
24
25
26
27
28



James A. Teilborg
Senior United States District Judge